

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**KEVIN JEROME SMITH, #14001019,**  
**Petitioner,**

**v.**

**LUPE VALDEZ, Dallas County Sheriff,**  
**Respondent.**

§  
§  
§  
§  
§  
§  
§

**3:14-CV-3233-N-BK**

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. No objections were filed. The District Court reviewed the proposed Findings, Conclusions, and Recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus under [28 U.S.C. § 2241](#) is **DISMISSED without prejudice** for want of jurisdiction the same being moot.

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. See [28 U.S.C. § 1915\(a\)\(3\)](#); [FED. R. APP. P. 24\(a\)\(3\)](#). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. See [Baugh v. Taylor, 117 F.3d 197, 202](#) and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous.

[Howard v. King, 707 F.2d 215, 220 \(5th Cir. 1983\)](#).<sup>1</sup> In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal

---

<sup>1</sup> [Federal Rule of Appellate Procedure 4\(a\)](#) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.

with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. See [Baugh, 117 F.3d at 202](#); [FED. R. APP. P. 24\(a\)\(5\)](#).

If petitioner files a notice of appeal,

(X) petitioner may proceed *in forma pauperis* on appeal.

( ) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED this 8<sup>th</sup> day of December, 2014.

  
UNITED STATES DISTRICT JUDGE